

**ENF.2 Past Costs Addressed >\$200,000 Via Settlements, Write-Offs, or Referrals****Section 1 - Program Activity Information**

1.1 Program Activity: Past Costs Addressed >\$200,000 Via Settlements, Write-Offs, or Referrals

1.2 Program Activity Category: GPRA Annual Performance Goal

1.3 Program Area: Enforcement

1.4 EPA Sponsor:

Subject Matter Expert	Subject Area	Phone #
Dan Dickson	Enforcement Data	(202) 564-6041

**Section 2 - Problem/Decision Objective**

2.1 Problem: The Superfund enforcement program GPRA goals and measures continue to focus on addressing past costs. It is vital to the management of the cost recovery program that sites with upcoming Statute of Limitations (SOL) be addressed prior to the expiration of the SOL. For cost recovery, the emphasis will be on addressing all sites with total outstanding past costs greater than or equal to \$200,000.

2.2 Stakeholder(s): Headquarters Enforcement staff (OSRE), Regional EPA Staff, Congress and the Public.

2.3 Decision-maker(s): Regional Administrators or their delegates sign the Enforcement Instruments, Decision Documents for Cost Write-Off, or Litigation/Referral actions that serve as the basis for this measure. EPA Regional WasteLAN staff are responsible for entering the data into WasteLAN on their behalf.

2.4 Decision: This measure tracks decisions to take cost recovery action by use of administrative cost recovery settlement; to transmit a Section 106/107 or 107 judicial referral for cost recovery, including settlements for past costs under a CD (with no prior litigation referral); to prepare a decision document not to pursue cost recovery; or to file a claim in bankruptcy. This measure requires the reporting of both the issuance of the settlements, referrals, or cost write-off decisions, their dates, as well as the dollar value of the costs addressed by the action or decision as described below.

For *administrative settlements*, credit is given on the date the Regional office or DOJ receives payment from the PRPs in direct response to a demand letter for voluntary cost recovery, or the date the Regional Administrator or delegatee signs the Administrative Order on Consent (AOC) or Consent Agreement (CA) that recovers 100 percent of the Trust Fund expenditures or settles a claim where the total response cost are less than \$500,000. The accomplishment of the administrative settlement is recorded in WasteLAN as the actual completion date (Actual Complete) of the administrative/voluntary cost recovery (Action Name = Admin/Voluntary Cost Recovery), AOC (Action Name = Admin Order on Consent), or CA (Action Name = Consent Agreement). If the settlement is compromised and total response costs are more than \$500,000, the AOC must be sent to DOJ for approval prior to signature by the Regional Administrator or delegatee.

For **Section 107 or 106/107 judicial referrals**, credit is given on the date of the Regional Administrator's memo transmitting the referral to DOJ or HQ [Action Name = Litigation (Generic), Section 107 Litigation, or Section 106 & 107 Litigation] as recorded in WasteLAN as the actual start date (Actual Start). This includes Consent Decree (CD) settlements (Action Name = Consent Decree) for RD/RA with a cost recovery component or CD settlements for cost recovery only that were not the result of a prior litigation referral. Credit is given for these CD settlements on the date of the Regional Administrator's memo transmitting the settlement to DOJ or HQ and recorded in WasteLAN as the actual start date (Actual Start). CD settlements that are for cost recovery only and result from a previous litigation referral do not count towards this target. The start date (Actual Start) for these actions is not reported in WasteLAN. Only the lodged (SubAction Name = Lodged by DOJ) and entered (SubAction Name = Entered by Court) SubActions, the SubAction actual completion date (Actual Complete), and the actual completion date (Actual Complete) of the CD are recorded. The actual completion date of the CD is the date it is entered by the court.

For **decision documents not to pursue cost recovery**, credit is given when the decision document (Action Name = Cost Recvry Decsn Docmt - No Sue) is signed by the Regional office and recorded in WasteLAN as the actual completion date (Actual Complete). The decision not to pursue cost recovery also may be documented in a 10-point settlement analysis. For the Cost Recovery Decision Document Not to Sue, the past costs that will not be recovered (Past Costs Written Off) and the reason the costs were written off should be reported in WasteLAN.

For **bankruptcy filing**, credit is given based on the date that the bankruptcy strategy package is prepared or on the date of the first creditor committee meeting as documented by the summary of the meeting. These dates are reported in WasteLAN as the SubAction "Creditors Committee Meeting" and/or "Bankruptcy Strategy Package" actual completion dates (Actual Complete). These SubActions are entered with the Claim in Bankruptcy action. For each Claim in Bankruptcy, the "Federal Costs Sought - Past" must be entered into WasteLAN.

### Section 3 - Information Needs

Name	Source	System	Table/Column
Site Id	WasteLAN	WasteLAN	site/site_id
NPL Status	WasteLAN	WasteLAN	site.rnpl_status_code = 'P' or 'F' or 'D' or 'S' or 'N' or 'R' or 'W'
Ralt Code	WasteLAN	WasteLAN	action.ralt_code = FE

Name	Source	System	Table/Column
AND			
Administrative Settlement	Settlement Document (Admin/Voluntary Cost Recovery, Administrative Order on Consent, Consent Agreement)	WasteLAN	action/rat_code, act_code_id where rat_code is 'AV', 'AC', 'CA'
Actual Completion Date		WasteLAN	action/act_actl_cmpltn_date is not null
Federal; Costs Settled-Past (required for each administrative settlement)	This is the amount of money recovered by EPA through the settlement document.	WasteLAN	enf_action_details.ead_federal_past_costs > 200000
OR			
Decision Documents	Decision document (Cost Recovery Decision Document Not to Sue		action/rat_code, act_code_id where rat_code is 'DD'
Actual Completion Date		WasteLAN	action.act_actl_cmpltn_date is not null
Past Costs Written Off (required for each decision not to pursue cost recovery)	This is the amount of money for which EPA is not pursuing cost recovery.	WasteLAN	enf_action_details.ead_cwo_past_costs_written_off > 200000
OR			
Judicial Referral	Section 107, 106/107 litigation referral document or Consent Decree document (Regional Administrator's memo transmitting the litigation referral or CD to DOJ or HQ)	WasteLAN	action/rat_code, act_code_id where rat_code is 'LT', 'CL', 'SV', 'CD'
Actual Start Date		WasteLAN	action/act_actl_strt_date is not null
Federal; Costs Sought-Past (required for each settlement)	This is the amount of money sought by EPA through litigation.	WasteLAN	enf_action_details.ead_federal_past_costs > 200000

Name	Source	System	Table/Column
OR			
Bankruptcy Filing Action	Bankruptcy document (summary of Creditor Committee Meeting , Bankruptcy Strategy Package)	WasteLAN	action/rat_code, act_code_id where rat_code is 'CB'
Subactions under 'CB' Claims in Bankruptcy proceeding action)		WasteLAN	action/rat_code, act_code_id where subaction.rat_code is 'CK' or 'BS'
Actual Start Date		WasteLAN	action.act_actl_strt_date is not null
Subaction Actual Completion Date		WasteLAN	action.act_actl_cmplt_date is not null
Federal; Costs Sought-Past (required for each administrative settlement)	This is the amount of money sought by EPA through litigation.	WasteLAN	enf_action_details.ead_federal_past_costs > 200000

## Section 4 - Scope/Universe

This measure applies to non-Federal facility NPL sites, Superfund Alternative sites and non-NPL sites. It only gives credit where the action addresses past costs greater than or equal to \$200,000. Credit for referrals is based on the referral package, not on the number of sites. Credit will be withdrawn if a case is returned to the region by DOJ or HQ for additional work but will be reinstated upon re-referral.

## Section 5 - Data Quality Requirements

- 5.1 Completeness: Data is supported by a signed document. If the action taken is a Consent Decree (with no prior litigation referral) for cost recovery only, it will require a start date and appropriate Federal Costs Settled Past dollars. Decisions not to pursue cost recovery should be recorded as a "Cost Recovery Decision Document - No Sue" with appropriate Past Costs Written off dollars. "Claim in Bankruptcy" actions should include a start date along with either a "Creditors Committee Meeting" subaction or a "Bankruptcy Strategy Package" subaction. For every "Claim in Bankruptcy" action, a value must be entered for "Federal Costs Sought - Past"
- 5.2 Accuracy: The data recorded in CERCLIS must reflect the correct, true, or reported values as reflected in source documentation. Planning Data is viewed immediately following the establishment of quarterly targets and must therefore be accurate to within the fiscal year quarter.
- Most Accurate - Data reported in official decision source document
- 5.3 Timeliness: This data should be entered in real time if possible. All data must be entered by the end of the fiscal year quarter in which it occurs. The data sponsor analyses the data at the national level to verify data entry on a regular (weekly-to-monthly).
- 5.4 Consistency: The data must be consistent throughout the user group, based on standards provided by Headquarters staff in the enforcement office.
- Most Consistent - National Guidance and definitions have been distributed

## **Section 6 - Information Collection and Reporting**

- 6.1 Source for the information: Settlement Document (Consent Decree, Administrative Order on Consent, Consent Agreement), Litigation/Referral (including generic litigation as well as litigation under specific law sections/codes), Decision Not To Pursue Cost Recovery.
- 6.2 User interface: User enters the settlement actions and actual completion dates; the judicial referral actions and actual start date; the decision not to pursue cost recovery or bankruptcy documents and actual completion dates on the Enforcement project schedule. Users also enter either Federal Costs Settled Past for each settlement via the Financial tab on the Enforcement Instrument screen; Federal Costs Sought Past for each referral via the Actions tab on the Litigation/Referral screen or Federal Costs Written Off for each decision not to pursue cost recovery via the Cost Write-Off screen; or Bankruptcy via the Litigation/Referral screen.
- 6.3 System transfers: This information is snapshot from regions to Headquarters.
- 6.4 Internal outputs: SCAP-14 Report
- 6.5 Audit reports:
- 6.6 External outputs: reported annually to Congress
- 6.7 Guidance documentation:
- ▶ Superfund Program Implementation Manual (SPIM) – OSWER Directive 9200.3-14-1G-Q
  - ▶ Enforcement Instruments Screens Quick Reference Guides
  - ▶ Cost Write Off Quick Reference Guide
  - ▶ Litigation/Referral QRG